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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,913	03/08/2004	James M. Brugger	53951-094	1674
21890	7590	10/18/2007		
PROSKAUER ROSE LLP PATENT DEPARTMENT 1585 BROADWAY NEW YORK, NY 10036-8299			EXAMINER HAND, MELANIE JO	
			ART UNIT	PAPER NUMBER
			3761	
			MAIL DATE	DELIVERY MODE
			10/18/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/796,913

Applicant(s)

BRUGGER ET AL.

Examiner

Melanie J. Hand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-12 and 16-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23 is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,8-12,16-20 is/are rejected.
- 7) ☒ Claim(s) 3,9,21 and 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments, see Remarks, filed April 5, 2007, with respect to the objection to claims 1, 9 and 10 have been fully considered and are persuasive. The objection to claims 1, 9 and 10 has been withdrawn.

Applicant's arguments with respect to the rejection(s) of claim(s) 1,2,4-6,8,10-12,14 and 15 under 35 U.S.C. 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a newly found prior art reference.

### ***Drawings***

Upon further consideration, the objection to the drawings made in the Office action mailed November 2, 2006 is withdrawn.

### ***Claim Objections***

Claim 1 is objected to because of the following informalities: the phrase "said at least first opposing portion" lacks proper antecedent basis or is a typographical error. Appropriate correction is required.

Claim 20 is objected to because of the following informalities: the phrase "the cartridge" lacks proper antecedent basis. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4-6, 8-12 and 16-20, are rejected under 35 U.S.C. 102(e) as being anticipated by Robinson et al (U.S. Patent No. 6,817,984).

With respect to **claim 1**: Robinson teaches a blood treatment system, comprising a blood treatment machine 2 with first and second opposing portions in the form of chassis 4 and door 34 respectively, spaced apart to form a gap therebetween (Fig. 1), said blood treatment machine 2 having at least one actuator 46,54,72 and at least one sensor 60 disposed on said first opposing portion. A support 38 is attached to the blood treatment machine 2. (Fig. 2) Cartridge panel 22 holds a fluid circuit. The planar support element 38 is configured to position and orient various portions in the form of tubing segments 44A, 52A, 68A of said fluid circuit such that they are in position to be engaged by said multiple actuators 46A,54A,72A and sensor 60 when said cartridge 26 is placed within said slot (Fig. 2) Support 38 is configured to permit said cartridge panel 22 to be rested thereupon when said cartridge panel 22 is inserted in said gap (Fig. 2). The support 38 and said cartridge panel 22 are configured such that said fluid circuit, the at least one portion and at least another portion are aligned respectively with said at

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least one actuator 46 and said at least one sensor. The blood treatment machine first and second opposing portions 4 and 34, respectively are movable with respect to each other to close around said cartridge 22 thereby causing said at least one actuator 46 to engage said at least one portion, e.g. 44A and said at least one sensor 60 to engage said at least another portion.

With respect to **claim 2**: The least one actuator includes multiple peristaltic pumps 46A, 54A, 72A. (Abstract, Col. 8, lines 19-21)

With respect to **claim 4**: The first and second opposing portions 4,34 are movable in a single motion by pivoting the door 34 about support shaft 32 away from the chassis 4 (Col. 8, lines 5-11). The said at least one portion 44A, 52A,68A includes at least three tube portions configured to be engaged with peristaltic pumps 46A,54A,72A (Col. 8, lines 18-21). The at least one actuator 46,54,72 includes at least three peristaltic pumps 46A,54A,72A, whereby said tube portions and said peristaltic pumps are caused to be engaged by a movement of said first and second opposing portions. (Col. 8, lines 18-24)

With respect to **claim 5**: The cartridge panel 22 includes cutouts to expose said at least one and said at least another portions to said at least one actuator and said at least one sensor, respectively. (Fig. 2)

With respect to **claim 6**: The blood treatment machine 2 is configured to substantially equalize a quantity fluid removed from a patient with a quantity of fluid added to a patient during a blood

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treatment so as to prevent change in total liquid volume in the circulatory system of the patient.

(Col. 23, lines 16-19)

With respect to **claim 8**: The actuators include multiple peristaltic pumps 46A, 54A, 72A.

(Abstract, Col. 8, lines 19-21)

With respect to **claim 10**: The first and second opposing portions 4,34 are movable in a single motion via pivoting of the door 34 away from the chassis 4 (Col. 8, lines 5-11). The said at least one portion 44A, 52A, 68A includes at least three tube portions configured to be engaged with peristaltic pumps 46A,54A,72A (Col. 8, lines 18-21). The at least one actuator includes at least three peristaltic pumps 46A, 54A, 72A, whereby said tube portions and said peristaltic pumps are caused to be engaged by a movement of said first and second opposing portions. (Col. 8, lines 18-24)

With respect to **claim 11**: The cartridge panel 22 includes cutouts to expose said at least one and said at least another portions to said at least one actuator and said at least one sensor, respectively. (Fig. 2)

With respect to **claim 12**: The blood treatment machine 2 is configured to substantially equalize a quantity fluid removed from a patient with a quantity of fluid added to a patient during a blood treatment so as to prevent change in total liquid volume in the circulatory system of the patient. (Col. 23, lines 16-19)

With respect to **claim 16**: Robinson teaches a blood treatment system, comprising a blood treatment machine 2 with first and second opposing portions in the form of chassis 4 and door

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34 respectively, spaced apart to form a gap therebetween (Fig. 1), said blood treatment machine 2 having at least one actuator 46,54,72 and at least one sensor 60 disposed on said first opposing portion. A support 38 is attached to the blood treatment machine 2. (Fig. 2) Disposable cartridge panel 22 holds a fluid circuit. The planar support element 38 is configured to position and orient various portions in the form of tubing segments 44A, 52A, 68A of said fluid circuit such that they are in position to be engaged by said multiple actuators 46,54,72 and sensor 60 when said cartridge 26 is placed within said slot (Fig. 2) Support 38 is configured to permit said cartridge panel 22 to be rested thereupon when said cartridge panel 22 is inserted in said gap (Fig. 2). The support 38 and said cartridge panel 22 are configured such that said fluid circuit, the at least one portion and at least another portion are aligned respectively with said at least one actuator 46 and said at least one sensor. The blood treatment machine first and second opposing portions 4 and 34, respectively are movable with respect to each other to close around said cartridge 22 thereby causing said at least one actuator 46 to engage said at least one portion, e.g. 44A and said at least one sensor 60 to engage said at least another portion.

With respect to **claim 17**: The at least one actuator includes at least two pumps 46A, 54A, 72A. (Abstract, Col. 8, lines 19-21)

With respect to **claim 18**: The second opposing portion 34 carries a user interface panel in the form of control panel 16: (Fig. 1, Col. 7, lines 44-46)

With respect to **claim 19**: The first opposing portion 4 is considered herein to constitute a major portion of the blood treatment machine and the second portion (door 34) is movably attached to it. (Fig. 1, Col. 8, lines 4-11)

With respect to claim 20: The first and second portions 4,34 have opposing facing surfaces that lie adjacent the cartridge 26, which opposing facing surfaces are parallel and remain parallel when closed around the cartridge 26. (Fig. 2)

***Allowable Subject Matter***

Claim 23 is allowed.

Claims 3, 9, 21 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Reasons for Allowance***

The following is a statement of reasons for allowance: A thorough search of the prior art of record did not disclose any reference, alone or in combination with other reference(s) that teaches or fairly suggests a chassis and a door connected by rails.

Robinson teaches the claimed invention substantially as claimed except for the limitation "wherein said first and second opposing portions are connected by rails at bottom ends thereof and said support includes at least a portion of said rails." Robinson does not teach or fairly suggest that the chassis 4 and door 34 are connected by rails to a door, said door being movable with respect to said chassis such that when said cartridge is placed in said slot is closed around said cartridge. Robinson explicitly teaches that the door 34 rotates about a support shaft 32 toward the chassis 4, therefore it would not be obvious to one of ordinary skill in the art to modify the device of Robinson such that the chassis and door are connected by



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rails, as such a modification could not be accomplished with a reasonable expectation of success.

***Reasons for Indicating Allowable Subject Matter***

The following is a statement of reasons for the indication of allowable subject matter: A thorough search of the prior art of record did not disclose any reference, alone or in combination with other reference(s) that teaches or fairly suggests a chassis and a door connected by rails.

Robinson teaches the claimed invention substantially as claimed except for the limitation "wherein said first and second opposing portions are connected by rails at bottom ends thereof and said support includes at least a portion of said rails." Robinson does not teach or fairly suggest that the chassis 4 and door 34 are connected by rails to a door, said door being movable with respect to said chassis such that when said cartridge is placed in said slot is closed around said cartridge. Robinson explicitly teaches that the door 34 rotates about a support shaft 32 toward the chassis 4, therefore it would not be obvious to one of ordinary skill in the art to modify the device of Robinson such that the chassis and door are connected by rails, as such a modification could not be accomplished with a reasonable expectation of success.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand  
Examiner  
Art Unit 3761

October 11, 2007

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Tatyana', is written over the printed name and title.